

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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ALION SCIENCE & TECHNOLOGY CORP.	:
	: ECF CASE
Petitioner,	:
	: Civil Action No.: 07-cv-3547 (SHS)
-against-	:
	:
BOMBARDIER, INC.,	:
	:
Respondent.	:
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PETITION TO COMPEL ARBITRATION

Petitioner Alion Science & Technology Corp. (“Alion” or “Petitioner”), by and through their undersigned counsel, hereby petition this honorable Court for an Order compelling arbitration between Petitioner and Bombardier, Inc. (“Bombardier”). As grounds for this action, Petitioner states as follows:

Nature of this Case

1. Petitioner commences this action seeking an order compelling arbitration between the parties to this action pursuant to an arbitration clause contained in a May 2000 subcontract agreement (“Agreement”) between Petitioner’s predecessor-in-interest, the Illinois Institute of Technology Research Institute (“IITRI”) and Bombardier. (A copy of the Agreement is attached as Exhibit A to the accompanying Declaration of Gregory W. Gilliam (“Gilliam Decl.”), submitted herewith.)

2. Bombardier, through its counsel, objects to proceeding through arbitration on the grounds, *inter alia*, that a threshold dispute regarding the applicable limitations

period is an issue that should be decided by a court of law prior to the submission of the dispute to the arbitral panel as contemplated by the Agreement.

3. Petitioner, therefore, seeks an order from this court compelling arbitration between the parties of both the applicable limitations period as well as the underlying merits of Petitioner's claims, as delineated in Petitioner's Demand for Arbitration dated March 27, 2007, ("Demand for Arbitration"). (A copy of the Demand for Arbitration is attached as Exhibit B to the Gilliam Decl.)

The Parties

4. Petitioner Alion is a Delaware corporation with a principal place of business at 1750 Tysons Boulevard, Suite 1300, McLean, VA 22102. On December 20, 2002, Alion acquired substantially all of the assets, rights and liabilities of IITRI's business. On that date, Alion became and remains a technology solutions company delivering technical expertise and operational support to the Department of Defense, civilian government agencies and commercial customers.

5. Respondent Bombardier is a publicly-traded Canadian corporation with a principal place of business in Quebec, Canada. Its core businesses include rail transportation equipment and regional and business aircraft. Bombardier has over 55,000 employees worldwide.

Jurisdiction and Venue

6. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332. The parties are diverse and the amount in controversy exceeds \$75,000.

Jurisdiction is also proper in this Court pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*

7. Venue is proper pursuant to 28 U.S.C. § 1391, as a substantial part of the events or omissions giving rise to the claim occurred in the City of New York, and Article 805 of the Agreement provides that it "shall be deemed to be executed in the City of New York, State of New York."

Background

8. On March 27, 2007, Petitioner served Bombardier with the Demand for Arbitration alleging, *inter alia*, that Bombardier breached the Agreement by failing to issue Change Orders consistent with Bombardier's evolving subcontract requirements and causing unnecessary delays in the delivery schedule by failing to provide parts and data to Petitioner in a timely manner. The amount of damages claimed in the prayer for relief is \$597,823.18, plus reasonable attorneys' fees, costs, and expenses, including all costs and expenses incurred in connection with the Arbitration proceedings and all costs and expenses incurred prior to the Arbitration proceedings as a result of Bombardier's breach of contract, and interest from the date that Bombardier should have paid Claimant for additional work.

9. Following receipt of the Demand for Arbitration, Bombardier's counsel contacted counsel for Petitioner and, pursuant to the terms of the Agreement's provision for arbitration, both parties selected a representative to serve on an arbitration panel known as the Contract Dispute Resolution Board. Pursuant to Article 803 of the Agreement, the party-selected representatives were then required to jointly select an arbitral panel Chairperson within twenty (20) working days. (*See* Gilliam Decl., Exh. B at 44.)

10. Prior to the expiration of this 20-day period, the parties reached an impasse on the issue relating to the identification and application of the appropriate limitations period applicable to Petitioner's claims.

11. Bombardier asserts that the underlying claims in the Demand for Arbitration are time-barred by the four-year limitation period set forth in New York Uniform Commercial Code § 2-275.

12. Petitioner asserts that the applicable limitations period is the six-year period contained in NY CPLR §213 pertaining to service contracts because the underlying contract had a main purpose of providing services rather than goods.

13. Following several communications aimed at resolving this impasse, counsel for both parties agreed to stay the arbitration process and the completion of the appointment of the full panel pending resolution of this issue. This petition follows.

14. Accordingly, Petitioner respectfully asks this Court for an Order compelling arbitration as contemplated by the Agreement on the time limitation issue as well as the underlying claims asserted in the Demand for Arbitration.

Dated: May 3, 2007
New York, New York

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